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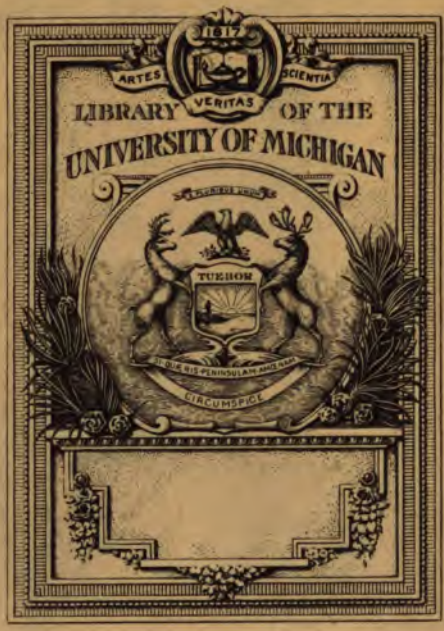
Manual for ... health, food + drugs officials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MANUAL OF PROCEDURE

FOR THE GUIDANCE OF

STATE HEALTH, FOOD, AND DRUG OFFICIALS.

(REVISED.)

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MANUAL OF PROCEDURE FOR THE GUIDANCE OF STATE HEALTH, FOOD, AND DRUG OFFICIALS (Revised).

Compiled by J. S. ABBOTT, *Chemist in Charge, State Cooperative Food and Drug Control*, and H. S. BAILEY, *Assistant Chemist in Charge, State Cooperative Food and Drug Control.*

SECTION 5 OF THE FOOD AND DRUGS ACT OF JUNE 30, 1906.

It shall be the duty of each district attorney to whom the Secretary of Agriculture shall report any violation of this act, or to whom any health or food or drug officer or agent of any State, Territory, or the District of Columbia shall present satisfactory evidence of any such violation, to cause appropriate proceedings to be commenced and prosecuted in the proper courts of the United States, without delay, for the enforcement of the penalties as in such case herein provided.

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DEPARTMENT OF JUSTICE.

WASHINGTON.

SUBJECT: Violations of the Food and Drugs Act reported to United States attorneys under section 5 of said act, by health or food or drug officers or agents of any State, Territory, or the District of Columbia.

DEPARTMENT CIRCULAR NO. 116 (NEW).

By section 5 of the act of June 30, 1906, known as the Food and Drugs Act, it is provided that it shall be the duty of each United States attorney to whom any health or food or drug officer or agent of any State, Territory, or the District of Columbia shall present satisfactory evidence of violation of said act, to cause appropriate proceedings to be commenced and prosecuted in the proper courts of the United States without delay, for the enforcement of the penalties provided therein. * * *

When information is received by United States attorneys from any one of such officials, which is deemed sufficient to warrant the forfeiture of goods, proper proceedings for that purpose should be at once instituted, but the case should thereafter be reported to this department.

GEORGE W. WICKERSHAM,
Attorney General.

JANUARY 3, 1910.

CRIMINAL ACTIONS. PROSECUTION OF INDIVIDUALS.

COMPLETE PROCEDURE FOR COLLECTION OF SAMPLES.

INSPECTORS.

1. Secure evidence that the articles

(*a*) Are offered for sale in original unbroken packages in any State other than that in which they have been respectively manufactured or produced, or

(*b*) Are being transported from one State, Territory, District, or insular possession to another, or, having been transported, remain unloaded, unsold, or in original unbroken packages, or

(*c*) Are sold or offered for sale in the District of Columbia or the Territories, or insular possessions of the United States.

(*d*) Have been received from any other State, Territory, or the District of Columbia, or any foreign country, or

(*e*) Having been so received are delivered or offered for delivery in original unbroken packages.

(*f*) Are intended for shipment to any foreign country, or

(*g*) Have been manufactured in the District of Columbia or in any Territory of the United States.

2. Collect samples.

(*a*) The Bureau of Chemistry requires 3 separate divisions of each sample collected. Each division should be sealed separately and should bear the same I. S. No. as the other divisions of the sample. In case of bulk goods these divisions may be made by the inspector subsequent to the time of the collection of the sample.

(*b*) Describe samples, using "Inspector's Description of Sample" book, furnished by the Bureau of Chemistry. Write your address underneath your name on this descriptive slip.

(*c*) Seal sample with paper seals furnished by the Bureau of Chemistry.

(*d*) Number samples with coupon numbers torn from "Inspector's Description of Sample" slip.

(*e*) Secure certified copy of dealer's guaranty, if he has such guaranty.

(*f*) Transport samples, preferably in person, or by registered mail, parcel post, or express, to your collaborating chemist.

3. Secure original or copy of invoices and freight records.

4. Secure a "Dealer's Receipt," signed by some one who can testify that the samples were taken from goods covered by the invoices and freight records.

5. Write up full report, making *one red* and *three blue* copies of "Inspector's Report on Collection of I. S. No. —" forms. (These forms are loose sheets and are made up mainly from the "Inspector's Description of Sample" slips and from the invoices and freight records. I. S. No. — means Interstate No. —, and is used to distinguish this number from numbers placed upon import samples.)

6. Send invoices, freight records, dealer's receipt, and *one red* and *two blue* copies of "Inspector's Report on Collection of I. S. No. —" to your collaborating chemist. The third blue copy is for the inspector's own files.

7. Send one copy of the "Inspector's Description of Sample" to the Interstate Office, Bureau of Chemistry. This keeps the bureau informed of the activities of commissioned officials.

Send the carbon copy to the chief of the district as indicated on slip.

8. Give your collaborating chemist any additional information which will assist him in making an analysis of the sample or in interpreting the result of analysis. The importance of all the information in possession of the inspector causing him to take the sample can not be overestimated.

9. Secure drawing or photograph of label, or preferably an original label when one can be obtained, and send to collaborating chemist.

10. All papers relative to the collection of the sample and to the evidence of its interstate shipment should be signed on the back by the inspector who obtained them.

COLLABORATING CHEMISTS.

1. Receive samples and sign for them.

2. Make record of date of receipt, whether received from inspector in person, by registered mail, parcel post, or express, condition of box, and the I. S. number of the sample. Make this record upon "Sample Index Card," furnished by the Bureau of Chemistry.

3. Analyze sample. (If in doubt as to the determinations to make, the composition of unadulterated samples, or the methods of analysis, consult the Bureau of Chemistry.)

4. Retain samples and parts of samples, sealed and under lock and key, until notified by the commissioned State official what disposition to make of them.

5. Write results of analysis, preferably with typewriter, on analytical report sheet furnished by the Bureau, checking each item with your initials. *Make three carbon copies.*

6. Attach 3 analytical reports (the original and 2 of the carbons) to "Dealer's Receipt," copy of guaranty, freight records, 1 red and 2 blue copies of "Inspector's Report on Collection of I. S. No. —" and transmit with your recommendations to your commissioned State official.

7. Do not destroy your laboratory notes containing the report of the actual analytical work, as these are required as a part of the evidence when the case comes to trial.

8. Be sure that all the papers relative to the interstate shipment of the sample have been signed by the inspector, and that each item of your analytical report is checked with the initials of the analyst who made the analysis.

COMMISSIONED STATE OFFICIALS.

The commissioned State official should send with his recommendation to the nearest United States food and drug inspection laboratory the sample or samples which the collaborating chemist has under lock and key, and all

of the records turned over to him by the collaborating chemist.

UNITED STATES FOOD AND DRUG INSPECTION LABORATORIES.

When the United States food and drug inspection laboratory receives the sample, the analytical report sheet, and the necessary records obtained by the inspector for the proof of the interstate character of the goods which were sampled, a check analysis will be made of the sample. The commissioned State official and the collaborating chemist will be notified of the opinion and final action of the Bureau of Chemistry concerning the disposition of the case.

MODIFIED PROCEDURE FOR COLLECTION OF SAMPLES.

One of the chief difficulties in securing sufficient evidence to warrant a proceeding for a violation of the Federal Food and Drugs Act is that of obtaining *proof of interstate shipment*. In general, this proof should be obtained by the inspector at the time of the collection of the sample. A sample taken in this way is called an "official sample." The records of proof of interstate shipment consist of the original or a copy of the *invoice* and *freight records* or other shipping memoranda covering the shipment, and a *receipt from the dealer* or his agent who received the goods from the transportation company to the effect that the article sampled by the inspector was the identical article covered by such invoice and shipping memoranda. A State inspector may soon become discouraged at the amount of time required both to obtain this proof of interstate shipment every time he collects a sample from an interstate shipment, and to prepare a complete record of the collection of the sample on the Bureau of Chemistry forms. Accordingly, a plan has been proposed that will eliminate much of this work, but still will enable State officials to apply the Federal Food and Drugs Act to every violation of the act which they discover. The plan proposed is as follows:

In the collection of samples of foods, feeding stuffs, and drugs which have been shipped in interstate commerce, a State inspector will take a sufficiently large sample in the case of bulk goods, or a sufficient number of samples in the case of small package goods, so that if analysis by a collaborating chemist of his State shows the products to be adulterated or misbranded there will be enough of the sample left for analysis by the Department of Agriculture. The inspector will use the State blanks, seals, and sample numbers for describing every sample that he collects and in addition to this will write his name, date of collection, and the number assigned to the sample, on the back of the invoice and other records in the possession of the dealer covering the goods which he samples. The dealer or the dealer's agent should write his name on the records also, so that at some future date the invoice and shipping records can be secured and identified in all cases where examination reveals evidence of adulteration or misbranding.

When a sample is analyzed by the State chemist and found to be neither adulterated nor misbranded under the Federal act, the case may be dropped and, so far as this department is concerned, no effort need be made to obtain any records of shipment. It is not necessary to report such cases to this department. If it appears from the analysis that the goods are either adulterated or misbranded, the inspector should at some early date obtain from the dealer from whom he purchased the sample the original or a copy of the invoice, shipping memoranda, such as freight bill, way bill, or bill of lading, and a dealer's receipt as described above, which constitute the *proof of interstate sale and delivery*.

With the information which the State has at this stage of the procedure the inspector who collected the sample is in a position to prepare a description of it on the department's forms. The unused samples, or unused part of the sample analyzed by the State chemist, should be sealed by the State inspector with the Bureau of Chemistry paper seals and identified by him with an I. S. number

which corresponds to the I. S. number printed on the Federal "Description of Sample" slip used by him in reporting the collection of the sample to this department. These samples and forms when properly prepared, together with a copy of the State chemist's analysis, should then be sent to the nearest branch laboratory of the Bureau of Chemistry, which will handle the case thereafter.

It is believed that this plan will eliminate the necessity for the collection of "proof of interstate shipment" in most of the samples collected and analyzed, and that there will be no failure to apply the law because of the trouble necessarily involved in securing such proof.

It is suggested that the commissioned State official notify the nearest branch laboratory of the bureau as soon as he finds a violation of the law. It may be that such laboratory can assist materially in the preparation of the necessary papers and collection of data.

The State official in whose State the offense was committed also should be notified, as he might be able to correct the evil at its source.

EXPLANATION OF BLANK BOOKS, LOOSE SHEETS, CARDS, ETC., FURNISHED TO INSPECTORS AND COLLABORATING CHEMISTS.

1. "INSPECTOR'S DESCRIPTION OF SAMPLE" BOOK.

a. "*Inspector's description of sample.*"

The "Inspector's Description of Sample" slip is made in duplicate. The notation opposite the "Date of shipment" should be the date of interstate shipment—that is, the date the product enters interstate commerce as shown by the freight records. The notation opposite "To whom sent" should be followed by the name and address of the collaborating chemist.

b. "*Bureau of Chemistry I. S. No. —.*"

These are number coupons attached to "Inspector's Description of Sample" slips, reading "Bureau of Chemistry I. S. No. —," and should be detached from slips and placed on each sample or on each division of the sample.

2. "INSPECTOR'S REPORT ON COLLECTION OF I. S. NO. —."

These forms are unbound loose slips. They indicate just what information should be secured from the dealer. These may be written up in the office of the commissioner. The information to be recorded upon these slips is very necessary in the final preparation of a case.

3. SEALS.

Inspectors should use the regulation paper seals bearing the seal of the department, together with a space for noting the I. S. number, date of collection, and the name of the inspector. Each seal used upon the sample must bear these notations in the handwriting of the inspector, either in ink or with an indelible pencil; neither initials nor stamps will be sufficient for this purpose.

The seals should be so affixed that the sample may be opened by the analyst without destroying the identifying marks. Care should be exercised in placing them on the package in order to prevent the breaking of the seal in transit. Reading matter contained on the label or stickers of the package should not be obliterated by the seals. If it is impossible to use the seal on a unit package without effacing the label or design, each unit should be numbered and initialed by the inspector and the subdivision securely wrapped in an outer covering and the seals attached to this, after writing thereon the name of the substance of the sample.

SEALING AND PACKING.

It is not necessary that the sealing and packing be done in the store where the sample is purchased, but it is important that the inspector maintain immediate charge of the sample from the moment it is purchased of the dealer until delivered to the post office or express office for shipment. A failure to observe these directions, by leaving samples at the hotel unsealed or having delivery made to the inspector by the dealer after purchase, may prejudice the result of the trial if such facts are developed.

SEIZURE ACTIONS—PROSECUTION OF ILLEGAL PRODUCTS.

It should be borne in mind that either one of the foregoing procedures is followed in anticipation of a criminal prosecution under section 2 of the act. Such procedure is also followed whenever it is intended to start a seizure action under section 10 of the act, which is to be followed by a criminal prosecution.

Whenever it is the intention of an official simply to make a seizure of unlawful goods without following it up with a criminal action, however, the procedures outlined need not be followed precisely. It may not even be necessary to take a sample, as in the case of spoiled fish or other decayed meat. In such cases the examination made by an inspector on the ground takes the place of the laboratory examination of the sample. Accurate notes should be taken by the inspector of all important points, and he should not rely upon his memory for essentials. It is not necessary in seizure cases to show that the goods were adulterated or misbranded before the time they were offered in interstate commerce.

Seizures of adulterated or misbranded goods may be made through the United States district attorneys independently of the Bureau of Chemistry upon the evidence submitted by commissioned State officials or by any other State health, food, or drug official. This course is desirable in the case of decomposed or putrid perishable food products which are likely to be scattered and consumed before a report of the case could take its regular course through the Department of Agriculture and the Department of Justice. A report of such seizures, however, with a copy of the libel, monition, and marshal's return, should be made to the branch laboratory of the Bureau of Chemistry, through which the State cooperates, for proper record, and this should be followed in due time by a report of the judgment of the court in the case.

WHAT GOODS MAY BE SEIZED.

Section 10 of the act indicates in the following language what goods may be seized:

"That any article of food, drug, or liquor that is adulterated or misbranded within the meaning of this act and is being transported from one State, Territory, District, or insular possession to another for sale, or, having been transported, remains unloaded, unsold, or in original unbroken packages, or if it be sold or offered for sale in the District of Columbia or the Territories or insular possessions of the United States, or if it be imported from a foreign country for sale, or if it is intended for export to a foreign country, shall be liable to be proceeded against in any court of the United States within the district where the same is found, and seized for confiscation by process of libel for condemnation."

UNITED STATES ATTORNEYS.

Seizure proceedings must be instituted and perfected in the judicial district where the goods are found, and every case appropriate for such proceedings should be reported by the commissioned State officials directly to the United States attorney for the district where the goods are located. In every case the United States attorney should be informed of the facts concerning the interstate shipment of the consignment, of the evidence which is available to prove that the consignment is adulterated or misbranded, the location of the consignment, and the marks by which it can be identified.

It is suggested that in filing a libel it is not always necessary to give the name of the consignee or the name of the party in whose possession the goods are found. To do so may work an injustice to an innocent consignee and interfere with the cooperation between the officials and dealers.

REIMBURSEMENT FOR EXPENSES INCURRED IN THE ENFORCEMENT OF THE FEDERAL FOOD AND DRUGS ACT.

The Bureau of Chemistry is authorized to reimburse the various State health and food departments or chemists for the chemicals and other laboratory materials actually consumed by collaborating chemists in the work of analyzing samples in connection with the enforcement of the Federal Food and Drugs Act *under the supervision of this bureau;* also to reimburse for the actual cost price of official samples taken by them and for the expenses incident to shipping and packing these samples. Any shipment made to Washington, D. C., the charges on which are to be paid by the Department of Agriculture, should be shipped transportation charges *collect.*

Reimbursement will also be made for expenses incurred for notary fees when necessary in connection with making affidavits relative to analysis of samples, etc., and for registering valuable packages to the bureau when the registry receipt is attached to cover such charge.

When submitting an account express receipts must be attached in each case, showing weight, points between which shipment moved, scale number, consignee, and consignor.

When the sum total of all the above items for which reimbursement is to be made amounts to $3 or more for any one month, an itemized account for same should be submitted on a Form 5 voucher at the end of such month. If the expenses do not amount to $3, the account should be submitted quarterly or once in two months. When any expense has been incurred, submit it at the end of each quarter. (July-September; October-December; January-March; April-June.)

Collaborating chemists should forward to the Bureau of Chemistry at the end of each calendar month a salary

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